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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,069	02/27/2004	Joachim Feld	2003P00335US	9170
7590	01/17/2008		EXAMINER	
SIEMENS CORPORATION INTELLECTUAL PROPERTY DEPT. 170 WOOD AVENUE SOUTH ISELIN, NJ 08830			WEIDNER, TIMOTHY J	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/789,069	FELD ET AL.
	Examiner	Art Unit
	Timothy Weidner	2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 October 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 October 2007 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Amendment

1. Claims 1-18 are pending.
2. Claims 1, 3, 6, 8, and 10 are currently amended.
3. Applicant's amendments, see page 7, paragraph 1, filed 10/19/2007, with respect to the objection to Figure 3, objection to the specification, and rejections under Section 112 have been fully considered and are persuasive. These objections and rejections have been withdrawn.

Response to Arguments

4. Applicant's arguments filed 10/19/2007 regarding rejections under Sections 102 and 103 have been fully considered but they are not persuasive. Applicant contends that "The passages cited in Shaffer do not relate to defining a phase in a transmission cycle based on a receive time of the end of a telegram or data packet."
5. The cited passages in Shaffer, particularly column 4, line 49 through column 5, line 10, specify "an isochronous transmission on the bus has just terminated," which is the same as a defined time of the end of a packet. Further, "If the network device's (second user) attempt ... causes a collision with data frames from another network device ... the backoff window (of the network device or second user) will be automatically extended to the end of the isochronous transmission," specifies the defined receive time is at a second user.
6. Regarding the amendment in claims 6 and 10 not found in claim 1 of changing "defined receive time" to "pre-defined receive time," Shaffer teaches "the backoff

window may be extended by the isochronous time remaining," which clearly indicates a pre-defined receive time.

7. The amendment of "each telegram assigned a first priority" is indicated in statement of rejection with column 2, lines 11-16, where "isochronous traffic is transmitted on reserved timeslots."

8. Regarding the amendment in claim 10 not found in claims 1 and 6 of adding "during cyclical transmission intervals," Shaffer teaches this in column 3, lines 14-26, as previously indicated regarding claims 4, 12, and 13.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "usable portion" in the currently amended claim 10 is used by the claim to mean "usable portion of a transmission interval", while the accepted meaning is "usable portion of a switchable data network comprising mechanisms" which implies a

physical structure. The term is indefinite because the specification does not clearly redefine the term.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1, 2, 4-7, 9, 10, 12, 14, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaffer et al. (U.S. 5,960,001, herein "Shaffer").

14. Regarding claims 1, 6, and 10, Shaffer teaches a method, system, and usable portion of a switchable data network for transmitting data in a switchable data network, comprising users having mechanisms for sending, receiving, and/or forwarding data telegrams (figure 2, item 112; column 5, lines 54-67), during cyclical transmission intervals (column 3, lines 14-26) wherein the telegrams having a beginning and an end (column 2, lines 62-67; column 4, lines 5-10) and wherein the telegrams are assigned priorities (column 2, lines 11-16), wherein a first usable portion is used during a first phase for sending data telegrams assigned a first priority from a first user to a second user (column 4, lines 49-67; column 5, lines 1-10), with the first phase having a pre-defined receive time for receipt of the end of the respective data telegram assigned the first priority at the second user (column 4, lines 49-67; column 5, lines 1-10).

15. Regarding claims 2 and 7, Shaffer teaches the first users are provided during a second phase after the end of the first phase for exclusively sending data telegrams

(column 4, lines 49-67; column 5, lines 1-10) assigned a second priority (column 2, lines 11-16) to the second users.

16. Regarding claims 4 and 12, Shaffer teaches the first phase is cyclically repeated (column 3, lines 14-26).

17. Regarding claims 5, 9, 14, 16, and 18, Shaffer teaches the system for transmitting realtime data is provided in the switchable data network, with the realtime data telegrams being assigned the first priority (column 1, lines 50-59; column 2, lines 11-16).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

20. Claims 3, 8, 11, and 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al. (U.S. 5,960,001, herein "Shaffer") as applied to claims 1, 6, 2, and 7 respectively above, in view of Schenkel (U.S. 5,157,659).

21. Regarding claims 3, 8, 11, and 17, Shaffer teaches a first phase and a second phase (column 4, lines 49-67; column 5, lines 1-10), but does not teach the first users are provided during a third phase after the end of the second phase for sending data telegrams assigned any priority to the second users.

22. Schenkel, which is in the same field of endeavor, teaches the first users are provided during a third phase after the end of the second phase for sending data telegrams assigned any priority to the second users (column 24, lines 28-46) for the purpose of allowing packets within each priority to be transmitted at lower and lower rates. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have data telegrams assigned any priority be sent in a third phase after the second phase to allow packets within each priority to be transmitted at lower and lower rates.

23. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al. (U.S. 5,960,001, herein "Shaffer") in view of Schenkel (U.S. 5,157,659) as applied to claim 3 above.

24. Regarding claim 13, Shaffer teaches the first phase is cyclically repeated (column 3, lines 14-26).

25. Regarding claim 15, Shaffer teaches data telegrams with realtime data are assigned the first priority (column 1, lines 50-59; column 2, lines 11-16).

Conclusion

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Weidner whose telephone number is (571) 270-1825. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TJW

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